THE HONOURABLE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 17174 of 2005

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Dated: 04.08.2005

Between:-

M. Vijay Singh s/o late Sri Seethal Singh, aged 56 years,

Occ: Business, R/o 3-5-628 to 30, Vittalvadi, Hyderabad

and two others.

. ..PETITIONERS

And

Additional Municipal Commissioner, M.C.H. East Zone

M.C.H. Tank bund, Hyderabad and another.

..RESPONDENTS

O R D E R

Seeking to issue a Mandamus declaring the action of the respondents in issuing Notice vide No. 188/2/ACP/C3/TPS/MCH/05, dated 26.07.2005 under Section 456 of Hyderabad Municipal Corporation Act directing the petitioners to vacate and remove the structures as illegal and arbitrary, the present writ petition is filed.

It is the case of the petitioners that they are the joint owners of the property bearing H. No. 3-6-244/2 situated at Himayathnagar, Hyderabad, which was constructed 25 years back with R.C.C. roof, and they have been running a coffee house by name

Vimal Café since more than 25 years. In the year 2004 the respondents without issuing any notice had earmarked a portion of the building for demolition for the purpose of road widening. Aggrieved by the same, they have filed a W.P. No.18231 of 2004 before this Court and this Court was pleased to dispose of the writ petition vide its order dated 8.10.2004 directing the respondents to follow the due procedure contemplated under Sec. 146 and 147 of the H.M.C. Act in case if the respondents intends to proceed with the road widening. For the reasons best known to the respondents, no steps were initiated under Sections. 146 and 147 of the H.M.C. Act for the purpose of acquiring the land in relation to road widening. Now the respondents had issued the impugned notice under Sec. 456 of H.M.C. Act dated 26.07.2005 directing the petitioners to vacate the building immediately and remove the dilapidated structures within 24 hours and the said notice is illegal and arbitrary. It is the further case of the petitioners that before issuing the impugned notice dated 26.07.2005 the respondents never inspected the building so as to ascertain the condition of the building. Earlier to the impugned notice dt. 26.07.2005, a notice under Sec. 459 of H.M.C. Act, dt. 22.7.2005 was issued. As such, both the notices are illegal and arbitrary. Hence, the petitioners came up with the present writ petition.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

The notices issued under Sections 459 and 456 of the H.M.C. Act, 1955 directing the petitioners to remove the dilapidated structures of the premises in question within 24 hours of receipt of notice, failing which the petitioners will be held responsible for any sort of danger and any problem arise due to the said dilapidated structures. Aggrieved by the said notice, the petitioners filed the present writ petition contending that they are running the restaurant and that the building in question is a R.C.C. roof and both the notices are served on them at a time on 27.07.2005. Therefore, the allegations made in the notices are not correct.

I have perused the material available on record and the notices.

A reading of both the notices makes it abundantly clear that no opportunity has been given to the petitioners to defend their case prior to taking action by the respondents-authorities under the notices impugned. Therefore, I am of the view that since prior notice has not been given to the petitioners with sufficient time to defend their cases

by way of explanations that is nothing but amounting to depriving the opportunity of the petitioners to put forth their cases before the respondents authorities. Apart from that the authorities have also not applied their mind before issuing the notices under Sections 459 and 456 of the HMC Act, since they have been issued for the same purpose. Therefore, I feel one of the two notices can be set aside for the reason that it is nothing but a repetition. Therefore, the notice issued under Section 456 of the H.M.C. Act is accordingly set aside.

Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it appropriate to direct the petitioners to submit their explanations to the notice issued under Section 459 of the H.M.C. Act within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanations, the respondents-authorities are directed to pass appropriate orders on its own merits in accordance with law, after affording an opportunity to the petitioners within a period of twelve weeks from the date of receipt of the explanations from the petitioners. Till such time, there shall not be any coercive steps by the respondents-authorities as to the demolition of the building of the petitioners.

Subject to the above directions, the writ petition is disposed of. No order as to costs.

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E. DHARMA RAO, J

4th August, 2005.

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